

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 3-06cv2322-N

BLANCA VALENZUELA, MARGIE SALAZAR, JOSE A. SERRATO,
JOSIE RENDON, CLARA TOVAR, CONSUELO ESPINO, MARIA
AVILA, ERNESTINA NAVARRETTE, MARIA E. MUNOZ, AMANDA
SALCIDO, CANDELARIO G. ORTEGA, MARIA ORTIZ, JOSE
OLIVA, RAFAELA CHAVEZ, ELODIA ARROYO, SUSANA CARDIEL,
GRACIE RIOS and LEONEL RUIZ, individually and on
behalf of all others similarly situated,
Plaintiffs,

v.

SWIFT BEEF COMPANY, INC., d/b/a SWIFT COMPANY, SWIFT &
COMPANY, HICKS, MUSE, TATE & FURST, INC., HM CAPITAL
PARTNERS OF DALLAS, LLC, and JOHN DOES I-V,
Defendants.

DEPOSITION OF: JAMES A.R. HAMILTON - April 9, 2008

PURSUANT TO NOTICE, the deposition of
JAMES A.R. HAMILTON was taken on behalf of the
Plaintiffs at 1770 Promontory Circle, Greeley,
Colorado 80634, on April 9, 2008, at 8:50 a.m.,
before Sharon L. Szotak, Registered Professional
Reporter, Certified Realtime Reporter, and Notary
Public within Colorado.

A P P E A R A N C E S

For the Plaintiffs: ERIC D. PEARSON, ESQ.
Heygood, Orr, Reyes &
Bartolomei
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For the Defendants: ROBERT E. YOULE, ESQ.
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I N D E X

EXAMINATION OF JAMES A.R. HAMILTON:
April 9, 2008

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By Mr. Pearson

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INITIAL
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1 WHEREUPON, the following proceedings
2 were taken pursuant to the Federal Rules of Civil
3 Procedure.

4 * * * * *

5 JAMES A.R. HAMILTON,
6 having been first duly sworn to state the whole truth,
7 testified as follows:

8 EXAMINATION

9 BY MR. PEARSON:

10 Q. Would you please state your full name for
11 the record.

12 A. James Ashley Robson Hamilton.

13 Q. Mr. Hamilton, my name is Eric Pearson. I
14 represent the plaintiffs in this lawsuit.

15 Have you ever had your deposition taken
16 before today?

17 A. Yes.

18 Q. I'm going to go over some of the ground
19 rules with you. You obviously understand that the
20 court reporter seated to your left is taking down
21 everything that you and I say, correct?

22 A. Yes.

23 Q. In order to make her job easier, I need to
24 ask you to answer out loud to all of my questions and
25 avoid nodding your head or using phrases like uh-huh or

1 huh-uh. Can you do that for me?

2 A. Yes.

3 Q. If you don't understand my question, will
4 you please let me know and I'll try to rephrase it?

5 A. Yes.

6 Q. Do you understand that when your
7 deposition is completed, your testimony will be printed
8 up in a booklet form and you will have an opportunity
9 to review it for accuracy?

10 A. Yes.

11 Q. And you understand that the testimony
12 you're giving today has the same force and effect as if
13 you were giving it in front of a judge and jury? Do
14 you understand that?

15 A. Yes.

16 Q. Do you understand that your deposition
17 testimony can be used at the trial of this case?

18 A. Yes.

19 Q. What's your current job position with
20 Swift?

21 A. Do you mean my title?

22 Q. We'll start with that, yeah.

23 A. I'm the director of corporate compliance.

24 Q. How long have you had that position or
25 that title?

1 A. August 2006, I believe.

2 Q. What are your job duties?

3 A. I'm responsible for the employment law
4 compliance. Not Sarbannes-Oxley.

5 Q. Who do you report to?

6 A. I report to Doug Schult.

7 Q. Do you have any direct reports to you?

8 A. Yes.

9 Q. Who are they?

10 A. Nubia Chavez, Ruben Flores.

11 Q. Anyone else?

12 A. No.

13 Q. Do you have any legal training? Are you a
14 lawyer?

15 A. I'm not a lawyer.

16 Q. Do you interact with the legal department
17 in carrying out your day-to-day job responsibilities?

18 A. Yes.

19 Q. Anyone in particular?

20 A. Chris Gaddis, Chad Hamilton.

21 Q. Who had -- was there someone called
22 director of corporate compliance prior to you taking
23 that position in approximately August 2006? Or was
24 that a newly created position?

25 A. The position -- the position's not a new

1 position. I don't know if the title was the same.

2 Q. Did you replace -- when you took that
3 position in August 2006 or thereabouts, did you replace
4 someone else who had had that position?

5 A. It was not a direct replacement.

6 Q. Okay. Had there been someone who was in
7 charge of employment law compliance for Swift prior to
8 you taking on those responsibilities in approximately
9 August 2006?

10 A. Yes.

11 Q. And who was that?

12 A. Tim Hill.

13 Q. And how long had he been in that role? Do
14 you know?

15 A. I don't know.

16 Q. Do you know if he had someone before him
17 doing that job?

18 A. I don't know.

19 Q. How long have you been with Swift in one
20 capacity or another?

21 A. 1995. August of 1995.

22 Q. Can you walk me through just briefly in
23 general terms your job history with Swift from 1995 to
24 August of 2006?

25 A. Yes.

1 Q. Okay. What was your first position?

2 A. My first position was quality control
3 inspector.

4 Q. What did that entail?

5 A. It entailed making sure that the product
6 met the specifications for the customers.

7 Q. Were you working at one of the facilities
8 or here in the corporate -- or wherever the corporate
9 headquarters was at the time?

10 A. One of the facilities.

11 Q. Which one was that?

12 A. Worthington, Minnesota.

13 Q. How long were you in that position?

14 A. Approximately one year.

15 Q. What was your next position?

16 A. My next position was assistant human
17 resource manager.

18 Q. Was that for a particular plant?

19 A. Yes.

20 Q. Worthington?

21 A. Yes.

22 Q. How long were you in that position?

23 A. Approximately one year.

24 Q. What was your next position?

25 A. Employee relations manager.

1 Q. What did that involve?

2 A. That involved working with the HR
3 director, ultimately to replace the HR director, with
4 specific function -- duties on reducing employee
5 turnover.

6 Q. Was that at the Worthington plant?

7 A. Yes.

8 Q. What steps did you take to help reduce
9 employee turnover?

10 A. I spent a lot of time working in the
11 community.

12 Q. Doing what?

13 A. Quite a number of things.

14 Q. Just give me some examples.

15 A. Meeting with city officials, serving on
16 different boards, working with the school district,
17 soccer fields.

18 Q. Were those things just trying to improve
19 the community and to make it a more appealing place to
20 live? Or how did that tie into retaining employees?

21 A. There had been a study by Dr. Joseph Diaz
22 at Southwest State University that indicated that
23 employee retention was directly tied to community.

24 Q. And the types of efforts that you just
25 described, did those occur at other plants, to your

1 knowledge?

2 A. I believe so.

3 Q. Was that a companywide decision to become
4 involved in those types of areas?

5 A. Not initially. My initial responses were
6 my own. I can't answer for the rest of the company at
7 that time.

8 Q. Did that eventually sort of become a
9 corporatewide philosophy, that in order to help retain
10 employees, you'd go into the community and try to
11 improve the community?

12 A. With my involvement at the corporate
13 level, to my knowledge, it's always been a corporate
14 philosophy to reduce turnover. And that involves
15 getting outside the four walls of the plant.

16 Q. What was your next position after employee
17 relations manager?

18 A. HR director.

19 Q. And was that plant specific, or is that
20 the Worthington plant?

21 A. Yes.

22 Q. What year -- how long were you in that
23 prior position of employee relations manager?

24 A. Let me think. Maybe seven years.

25 Q. And then as HR director of the Worthington

1 plant, what were your job duties in that position?

2 A. I was responsible for the entire human
3 resource function of the facility.

4 Q. Did that include hiring practices?

5 A. Yes.

6 Q. How long were you in that position?

7 A. Three years.

8 Q. And what was your next position?

9 A. Director of corporate compliance.

10 Q. Which is your current position?

11 A. Yes.

12 Q. Let me ask you to take a look at this

13 Exhibit 13 from the Doug Schult deposition. And I want
14 to just make sure that I understand which topics you're
15 testifying on today.

16 MR. PEARSON: And I'm happy -- if you and
17 I just want to reach an agreement or I can ask him.
18 Whatever you prefer. I'm just referring to your
19 February 21st letter.

20 MR. YOULE: Well, if you look at -- if you
21 look at Mr. Higgins' January 25th letter, which was
22 marked in Mr. Schult's deposition as Exhibit 13,
23 Mr. Hamilton, as opposed to Mr. Schult yesterday,
24 wasn't requested in individual deposition. So why
25 don't you just go through and ask him. I'm not sure he

1 knows.

2 MR. PEARSON: Okay.

3 Q. (BY MR. PEARSON) Are you looking at
4 Exhibit 13, the letter there?

5 A. Yes.

6 Q. Starting off on the second page where you
7 just were, looking at topic 10 and 11, would you read
8 those to yourself. And my question is, to your
9 knowledge, are you the person most knowledgeable on
10 those topics to testify on behalf of Swift?

11 A. Yes.

12 Q. And if you would turn to the next page and
13 read to yourself topics 16 through 20. And I'm going
14 to ask you the same question.

15 A. Yes.

16 Q. Okay. And finally on the next page,
17 topics 22 through 25, the same question.

18 A. (The deponent perused the exhibit.)

19 Yes.

20 Q. Have you ever been interviewed by ICE with
21 respect to any issues relating to the employment of
22 illegal aliens or persons who have committed identity
23 theft?

24 A. Would you rephrase the question.

25 Q. Sure. You're aware of the ICE

1 investigation that occurred in 2006 and then culminated
2 in the ICE raids in December 2006, correct?

3 A. Yes.

4 Q. Were you ever interviewed by ICE or any
5 other governmental agency relating to those issues?

6 A. No.

7 Q. Have you ever been interviewed by the FBI?

8 A. No.

9 Q. Or anyone with the Justice Department?

10 A. Yes.

11 Q. Okay. And when were you interviewed by
12 the Justice Department?

13 A. I was interviewed by the Justice
14 Department somewhere between 2000 and 2002.

15 Q. What did that relate to?

16 A. That related to a charge of discrimination
17 brought by the Office of Special Counsel that we were,
18 in fact, going too far to try to verify the work status
19 of our employees.

20 Q. Any other interviews by the Justice
21 Department besides that one?

22 A. No.

23 Q. I want to talk a little bit to you about
24 different hiring practices of Swift. Does Swift --
25 since your time with the company, has Swift ever

1 engaged in recruiting efforts for employees at its
2 processing plants in foreign countries?

3 A. No.

4 Q. Never placed any radio TV, or newspaper
5 ads in any foreign countries?

6 A. No.

7 Q. What languages does Swift use in its
8 advertising or written materials intended to recruit
9 employees for its processing plants?

10 A. I don't know that I can answer every
11 language. We've got a lot of languages in the plants.

12 Q. Okay. Obviously English and Spanish; is
13 that correct?

14 A. Yes.

15 Q. And what about the Mayan dialect? Are you
16 familiar with that?

17 A. The what?

18 Q. Mayan. Spoken by people from Guatamala?

19 A. I didn't know there was a Mayan dialect.

20 Q. Do you know what language people from
21 Guatamala speak, if it's a dialect of Spanish?

22 A. No.

23 Q. Who would be knowledgeable as to what
24 languages Swift uses in its written materials related
25 to recruiting or hiring production plant employees?

1 A. Well, I'm knowledgeable. And each of the
2 plants, if they had any additional languages that they
3 used, would also be knowledgeable. The HR director at
4 each facility.

5 Q. Does Swift use advertisements for
6 recruiting?

7 A. Yes.

8 Q. And who is in charge of producing those
9 advertisements? Is there a department within Swift, or
10 is there an outside vendor that does that?

11 A. Well, there's not a department within
12 Swift.

13 Q. Do you use an outside vendor, then?

14 A. Not a particular vendor.

15 Q. Okay. Well, for example, in 2006 when
16 Swift decided to hire additional employees due to the
17 imminent ICE raids, and there was advertising done, who
18 was in charge of that advertising?

19 A. Well, depending on each location. If I
20 wanted to hire somebody -- for example, if I'm in the
21 Worthington plant and I want to hire somebody, I'd
22 contact the local radio station and ask to run an ad.

23 Q. And who writes the copy? Someone from
24 Swift or someone from the -- do you hire an outside
25 vendor for that?

1 A. Typically we would give a radio station --
2 for example, using my example of Worthington, if I was
3 to contact the local radio station and ask them to run
4 an ad, I'd give them some details of the job. And then
5 they would put that in the form of an ad for our
6 approval.

7 Q. And in 2006 when there was an effort made
8 to -- Mr. Schult said overhire or overstaff the plants
9 in anticipation of the ICE raids, was the advertising
10 directed from corporate, or was it done on a
11 plant-by-plant basis?

12 A. On a plant-by-plant basis.

13 Q. Were you involved in any way in that
14 personally?

15 A. At some point, I was, yes.

16 Q. And what was your involvement?

17 A. My involvement was related -- I think I
18 got involved after the raids. I think your question
19 was prior.

20 Q. Okay. What did you do after the raids in
21 that area?

22 A. After the raids, I helped coordinate
23 recruiting efforts related specifically to the Cactus
24 facility.

25 Q. And what were the recruiting efforts at

1 the Cactus facility post raid?

2 A. That's a very broad question.

3 Q. Well, tell me some of the things -- I
4 mean, tell me some of the things that you did to try to
5 recruit for the Cactus plant after the ICE raids?

6 A. We went to local area job services. We
7 placed an ad on a billboard. We had a hamburger feed
8 outside the Tyson plant in Amarillo. We drove to every
9 town that had a similarly situated industry within a
10 multi-state area.

11 Q. Did you have any input on the increase in
12 wages in October 2006 at the various processing
13 centers?

14 A. No.

15 Q. You were aware of that, I assume?

16 A. Was I aware?

17 Q. Yes.

18 A. A little bit. I couldn't tell you the
19 details.

20 Q. Were you aware of the opening of
21 recruitment centers or hiring centers in El Paso and
22 McAllen in that time frame?

23 A. Yes.

24 Q. And those centers were recruiting for all
25 the production facilities?

1 A. Initially they recruited specifically for
2 the Cactus plant, because that had the greatest need.
3 But at some point, then, we recruited for any facility
4 that had a need.

5 Q. Did you participate in the decision to
6 place those recruiting centers in El Paso and McAllen?

7 A. Yes.

8 Q. And why were those cities chosen?

9 A. Those cities were chosen because they had
10 favorable wage comparisons, high unemployment, and
11 dense populations.

12 Q. Why did Cactus have the greatest hiring
13 need?

14 A. I don't know.

15 Q. Had they just lost the most employees? Or
16 when you say Cactus had the greatest need, what do you
17 mean by that?

18 A. They had the greatest number of -- they
19 had the largest number of shortage. The shortage was
20 greater there than in other locations.

21 Q. Does Swift also use workforce recruitment
22 centers to hire?

23 A. Yes.

24 Q. And how does that work?

25 A. For example, when we went to the Tyson

1 facility in Amarillo, contact the local workforce
2 center and schedule a time to be there. And then we
3 include in our advertising on the radio or the
4 newspaper or the billboard or whatever it is we're
5 going to advertise that we're going to be at that
6 workforce center available to do interviews.

7 Q. And are those workforce recruitment
8 centers private businesses, or is that some type of
9 government agency?

10 A. Government agency.

11 Q. Do you know who runs that?

12 A. Each state has their own set of workforce
13 centers.

14 Q. Did those workforce centers also typically
15 make job postings on the Internet?

16 A. Yes.

17 Q. And does Swift monitor those, the content?

18 A. I'm not sure I understand the question.

19 Q. Does Swift have any input on the content
20 of those job postings on the Internet?

21 A. Yes.

22 Q. And what is that? Do you write the
23 posting or do you just review it and approve it?

24 A. Well, it can be done one of two ways. One
25 is, we can post it directly. Or one is, it would be

1 similar to a radio ad where we give them the
2 information and they post it and show it to us for
3 approval.

4 Q. Is any tracking done as to who is
5 accessing those job postings on the Internet?

6 A. Tracking? I'm not sure I understand your
7 question.

8 Q. Well, for example, my law firm, we have a
9 website and we can track each month how many hits we're
10 getting and actually where they're coming from
11 geographically.

12 A. I don't believe so, no.

13 Q. And what is outreach recruiting?

14 A. Outreach recruiting would mean recruiting
15 outside the community.

16 Q. And what about the use of employment
17 agencies? Have employment agencies ever been used for
18 hiring?

19 A. Yes.

20 Q. And when was that?

21 A. After the raid in 2006.

22 Q. It had not been done prior to that point?

23 A. I think that we gave a written answer.
24 Generally the answer is no. In a couple particular
25 locations, Santa Fe Springs, the answer is yes.

1 Q. And why, in general terms, were employment
2 agencies not used in the past?

3 A. I don't know.

4 Q. That was not a decision you had any input
5 in?

6 A. We've never used them.

7 Q. Why did you start using them, then, in
8 particular in -- after the ICE raids?

9 A. Because we had a shortage of employees in
10 Cactus.

11 Q. So were employment agencies utilized just
12 for the Cactus plant or for other facilities, as well?

13 A. We -- you know, I don't know that I know
14 the answer to that.

15 Q. What, if anything, did Swift do to ensure
16 that these employment agencies were following
17 immigration laws in their hiring practices?

18 A. Well, I met with the group from the agency
19 Manpower that we were going to bring in, and went
20 through a full version of Connect the Dots. I met with
21 them on-site to verify what their practices were. We
22 spent quite a bit of time on that.

23 Q. How were the employment agencies paid?
24 Were they paid per applicant or per hire or on an
25 hourly basis? Or how were they paid?

1 A. I don't know that.

2 Q. Do you know who would know that?

3 A. Doug Schult I believe would be the best
4 person to answer that question.

5 Q. Aside from the actual application process
6 itself, what, if anything, did Swift do in its hiring
7 and recruiting efforts to discourage illegal aliens
8 from applying for positions at Swift?

9 A. I'm not sure I understand your question.

10 Q. I'm going to talk to you a little bit
11 later about when someone actually comes to Swift and
12 applies for a job, what the process is and what, if
13 anything, Swift does to make sure it doesn't hire
14 illegal aliens.

15 Setting that aside, what, if anything,
16 does Swift do, just in its marketing and its
17 interaction with these recruitment centers and its
18 outreach recruiting and employment agencies -- what
19 does it do, if anything, to prevent illegal aliens from
20 applying for jobs at Swift?

21 MR. YOULE: Objection to form. You can
22 answer if you understand the question.

23 A. I'm not sure I understand the question.

24 Q. I understand that once somebody shows up
25 at a Swift plant and starts to fill out an application,

1 that there are certain procedures that Swift follows,
2 for example, Basic Pilot and Connect the Dots.

3 Correct?

4 A. That's correct.

5 Q. And some of those procedures are designed
6 to prevent illegal aliens from being hired, correct?

7 A. That's correct.

8 Q. And to prevent people who have committed
9 identity theft from being hired, correct?

10 A. I'm not -- well, if we're talking about
11 being hired, it sounds to me like that's prehire.

12 Q. Right. I'm talking about prehire now.

13 A. Then I'm not understanding your question.

14 Q. Okay. What I'm trying to figure out -- I
15 understand that once somebody shows up at a plant and
16 applies for a job, there are certain steps that Swift
17 takes to assist it in making sure that illegal aliens
18 are not hired. For example, Basic Pilot and Connect
19 the Dots, correct?

20 A. That's correct.

21 Q. What I'm trying to figure out is, is there
22 anything Swift does to discourage those people from
23 even showing up in the way that it recruits or
24 advertises or works with these outreach centers?

25 A. We work with legitimate state -- we go to

1 state agencies, that sort of thing. We advertise
2 through legitimate regular channels, well known radio
3 stations, newspapers.

4 Q. Does Swift ever put out the message that
5 illegal aliens should not apply to their processing
6 facilities?

7 MR. YOULE: Objection to form. You can
8 answer.

9 A. I don't understand what you mean by that
10 question.

11 Q. Is there any effort to communicate to
12 potential job applicants before they arrive at a plant
13 that Swift is not interested in hiring illegal aliens?

14 A. Yes.

15 Q. And what is that?

16 A. We have postings in the plant.

17 Q. Anything else?

18 A. I'm not sure I quite understand your
19 question, but I think that's -- would be one way that's
20 responsive.

21 Q. Does Swift also use employee referrals to
22 hire employees? One employee referring someone to the
23 plant?

24 A. Yes.

25 Q. And those employees who refer someone to

1 the plant, are they paid some kind of bonus or do they
2 get any benefit from that?

3 A. Yes.

4 Q. What do they get?

5 A. Well, it depends on each plant's
6 particular hiring bonus program as to the dollar
7 amount, but there's a certain dollar amount.

8 Q. It's just a fixed one-time payment?

9 A. Each plant has -- would have the potential
10 to have a plan that might differ slightly from a
11 different plant.

12 Q. Do you know what the plan was in Cactus?

13 A. Not off the top of my head, no.

14 Q. Have you ever heard of the term "coyote"?

15 A. Yes.

16 Q. And when I use that term, I mean people
17 that smuggle illegal aliens into the country.

18 A. Yes.

19 Q. Has Swift ever done any kind of internal
20 investigation to ensure that the people it's hiring
21 were not brought into this country by coyotes?

22 A. I don't understand the question.

23 Q. Does Swift undertake any efforts to ensure
24 that its job applicants are not people who came into
25 the country illegally through the aid of a coyote?

1 A. I guess I don't understand that.

2 MR. PEARSON: Can you just reread the
3 question.

4 (The last question was read back as
5 follows: "Does Swift undertake any efforts to ensure
6 that its job applicants are not people who came into
7 the country illegally through the aid of a coyote?")

8 A. Can you give me an example?

9 Q. (BY MR. PEARSON) Well, has Swift ever
10 investigated whether any of its own employees are
11 interacting with coyotes to help bring in illegal
12 workers?

13 A. I guess I don't -- that's a little broad
14 for me.

15 MR. YOULE: You're distinguishing -- as I
16 understand the question, you're distinguishing the
17 situation of someone being brought in by a coyote as
18 opposed to all of Swift's efforts with respect to
19 vetting out potentially illegal aliens?

20 MR. PEARSON: Yes.

21 MR. YOULE: In other words, a particular
22 let's focus only on the coyote issue as opposed to
23 everything else?

24 MR. PEARSON: Yes, exactly.

25 A. I don't know that -- I don't know how we'd

1 go about investigating whether coyotes exist. I don't
2 know how we'd --

3 Q. (BY MR. PEARSON) Has any Swift employee,
4 to your knowledge, ever been investigated for
5 interacting with a coyote?

6 A. Not to my knowledge.

7 Q. Let me ask you to look at -- I'll take
8 that book back from you. I'll ask you to look at
9 Exhibit 1.

10 A. Okay.

11 Q. These are interrogatory -- first
12 supplemental interrogatory answers. And I want to
13 direct you to interrogatory number 6 on page 9, if you
14 would, please.

15 A. Okay.

16 Q. And could you read that to yourself, and
17 I'm going to ask you some questions about it.

18 A. Okay.

19 (The deponent perused the exhibit.)

20 Okay.

21 Q. Is the answer to interrogatory number 6
22 contained in Exhibit 1 accurate, to the best of your
23 knowledge?

24 A. We supplemented that, but, yes.

25 Q. Let's go ahead and look at that

1 supplementation, which I think is at Exhibit 2.

2 A. Okay.

3 Q. Did you have some role in supplementing
4 the answer to that interrogatory?

5 A. Yes.

6 Q. And what role was that?

7 A. Discussing, debating the language, as to
8 whether that was the best representation.

9 Q. And if you compare the answer to
10 interrogatory number 6 in Exhibit 1 to the answer in
11 Exhibit 2, you'll see that, looking at Exhibit 1, the
12 first sentence in the answer to interrogatory number 6
13 in Exhibit 1 says, "Swift employs uniform procedures
14 across all facilities to determine if a prospective
15 hourly employee has the legal right to be employed in
16 the United States." Did I read that accurately?

17 A. I'm sorry. I was looking at the
18 document.

19 Q. Okay. Going back to Exhibit 1.

20 A. Okay.

21 Q. The first sentence of the answer to
22 interrogatory number 6 in Exhibit 1 reads, "Swift
23 employs uniform procedures across all facilities to
24 determine if a prospective hourly employee has the
25 legal right to be employed in the United States." Did

1 I read that accurately?

2 A. Yes.

3 Q. And that sentence was omitted in the
4 answer to interrogatory number 6 in Exhibit 2; is that
5 right?

6 A. That's correct.

7 Q. And why was that done?

8 A. I think that was an omission.

9 Q. Unintentional?

10 A. Unintentional.

11 Q. Okay. And looking also at the answer --
12 so that statement -- let me back up.

13 The statement that I read from the answer
14 to interrogatory number 6 in Exhibit 1, which said,
15 "Swift employs uniform procedures across all facilities
16 to determine if a prospective hourly employee has the
17 legal right to be employed in the United States," that
18 statement is accurate?

19 A. That's correct.

20 Q. And to the extent it was omitted in the
21 response to interrogatory number 6 in Exhibit 2, that
22 was unintentional?

23 A. That's correct.

24 Q. Looking at Exhibit 1, the same
25 interrogatory number 6, the last paragraph reads, in

1 part, "In 2006, the U.S. Department of Homeland
2 Security released the Image Program, a series of best
3 practices to be used by U.S. employers to maintain a
4 legal workforce. Almost immediately thereafter, Swift,
5 in partnership with a third-party contractor, Border
6 Management Strategies, developed Connect the Dots, a
7 set of procedures based upon the government's Image
8 Program. Swift implemented Connect the Dots in or
9 about August of 2006." Did I read that correctly?

10 A. Yes.

11 Q. If you compare that paragraph to the final
12 paragraph in interrogatory number 6 of Exhibit 2,
13 you'll see that the introductory portion of that that
14 talks about the Image Program has been deleted. Do you
15 see that?

16 A. Yes.

17 Q. Was that intentional or unintentional?

18 A. That was intentional.

19 Q. And why was that done?

20 A. It's a nuance difference, but it's a
21 timing issue.

22 Q. Can you explain that?

23 A. We -- we were looking to work with Border
24 Management Strategies, who knew about the Image
25 Program, but we were looking to work with them prior to

1 any knowledge of the Image Program that was being
2 introduced. So it's related to the timing of knowledge
3 about the Image Program and our working with Border
4 Management Strategies to develop our own policies and
5 procedures. It's a nuance difference.

6 Q. And to this day, Swift has not joined the
7 Image Program, correct?

8 A. That's correct.

9 Q. Why was Border Management Strategies
10 hired?

11 A. Ongoing efforts to make sure that we're
12 fully compliant with employment eligibility and
13 identity verification procedures.

14 Q. Going back for a minute -- we're not going
15 to talk about those just right now.

16 Going back for a minute to the hiring
17 practices of Swift, what, if anything, has Swift
18 historically done to assist potential job applicants
19 with transportation issues?

20 A. After the raids, we began busing people
21 from Amarillo to the Cactus facility.

22 Q. Had that ever happened prior to the raids?

23 A. Not to my knowledge.

24 Q. Were there other transportation
25 initiatives undertaken by Swift other than with respect

1 to the Cactus facility?

2 A. Not to my knowledge.

3 Q. Were job --

4 A. I'm sorry. Yes.

5 Q. Okay. And what was that?

6 A. We had ride share, and we -- we instituted
7 ride share after the raids in Marshalltown.

8 Q. And what does that entail?

9 A. We promoted and facilitated employees
10 working together to carpool from Des Moines to the
11 Marshalltown facility.

12 Q. Were job applicants at any of the
13 production facilities reimbursed for bus transportation
14 to the plants?

15 A. Yes.

16 Q. And was that at more than one facility?

17 A. Yes, I think so.

18 Q. And did that happen prior to the ICE raids
19 or only after the ICE raids?

20 A. Well, that's happened prior to the ICE
21 raids and after.

22 Q. Focusing on the prior to the ICE raids,
23 was that a general practice or just an occasional
24 thing? Or how was that policy of reimbursement for
25 transportation handled?

1 A. That was a -- rare would be a better word.

2 Q. And on what occasions was that done?

3 A. If we needed a staffing -- if we had a
4 staffing issue potentially in a plant, and we had to
5 recruit, say, more than 60 miles away. An individual
6 plant may make the decision to reimburse either mileage
7 or something of that nature for somebody to drive to
8 the facility.

9 Q. Okay. And what about relocation expenses?
10 Has Swift paid those for potential employees?

11 A. Yes.

12 Q. And when has that been done?

13 A. Again, rarely prior. Afterwards, we had,
14 of course, more frequent.

15 Q. And what type of relocation expense
16 reimbursement was there?

17 A. It was mileage would be common. Meal
18 tickets or some kind of reimbursement for food
19 expenses. Maybe a short period of time of housing.

20 Q. Housing meaning you paid their rent?

21 A. Generally staying in a motel.

22 Q. Did Swift also subsidize the rent for some
23 of its workers?

24 A. I believe that that has been done. And
25 subsidize, I mean an initial payment toward getting

1 somebody into an apartment.

2 Q. Was that done both before and after the
3 raids?

4 A. Yes.

5 Q. And what about working with local builders
6 to help subsidize them to actually build additional
7 living facilities? Has that been done?

8 A. Yes.

9 Q. And was that done both before and after
10 the raids?

11 A. No.

12 Q. Just after the raids?

13 A. Yes.

14 Q. And where was that done?

15 A. In Cactus.

16 Q. And explain how that worked.

17 A. There was a tornado in the town of Cactus
18 that destroyed 300 homes. And so we were busing people
19 from Amarillo. So we helped to incentivize some
20 builders to repair, rebuild, or build new places.

21 Q. Has Swift ever had dormitories or any
22 other kind of residential facility that it owned or
23 operated for its workers?

24 A. No.

25 Q. Any other assistance for job applicants

1 other than transportation or housing, the things we've
2 already talked about?

3 A. I don't believe so, no.

4 Q. Were you involved in the decision to hire
5 Border Management Strategies?

6 A. No.

7 Q. Do you know who did that? Whose decision
8 that was?

9 A. Yes.

10 Q. Who was that?

11 A. That was Doug Schult.

12 Q. And who was the principal of Border
13 Management Strategies?

14 A. Mark Reed.

15 Q. Have you interacted with him personally?

16 A. Yes.

17 Q. Do you know what his experience or
18 background is?

19 A. Yes.

20 Q. What is it?

21 A. He was the district director for
22 immigration for a 19-state area. I think he was also
23 in charge, at one point, of the El Paso intelligence
24 center. He was a high ranking immigration official.

25 Q. Do you consider him knowledgeable on

1 immigration issues?

2 A. Yes.

3 Q. And knowledgeable about the hiring and
4 employment of illegal aliens, issues relating to that?

5 A. Yes.

6 Q. Let me ask you to turn to Exhibit 18, if
7 you would, in your notebook.

8 A. Okay.

9 Q. This is from an Internet article. And if
10 you'll look at the third paragraph of Exhibit 18, it
11 reads, "The meat packing industry has become dependent
12 on an unauthorized labor force, and it is not good
13 government to destroy an entire industry. In some way,
14 there is going to be a meeting of the minds, said Mark
15 Reed, a former immigration regional director who now
16 runs his own consulting business, Border Management
17 Strategies, in Tucson, Arizona." Did I read that
18 correctly?

19 A. Yes.

20 Q. That first part of Mr. Reed's statement,
21 "The meat packing industry has become dependent on an
22 unauthorized labor force," do you agree or disagree
23 with that statement?

24 MR. YOULE: Objection to form.

25 A. I have no way of knowing what he bases

1 that information on.

2 Q. Well, do you agree that that's an accurate
3 statement?

4 A. I can't agree or disagree without knowing
5 how or what he makes his opinion on.

6 Q. Okay. Well, putting aside what Mr. Reed
7 said, do you agree or disagree that the meat packing
8 industry has become dependent on an unauthorized labor
9 force?

10 A. Personally, I disagree.

11 Q. Do you disagree that -- strike that.

12 Isn't it true that prior to the ICE raids
13 in December 2006, that at least 10 percent of Swift's
14 workforce at its processing facilities was composed of
15 illegal aliens?

16 A. Not to my knowledge.

17 MR. YOULE: Objection to form for lack of
18 foundation.

19 Q. Isn't it true that prior to the ICE raids
20 in December 2006, at least 10 percent of Swift's
21 employees in its production facilities were people who
22 committed identity theft?

23 MR. YOULE: Same objection. You can
24 answer.

25 A. Not to my knowledge.

1 Q. The 1300 or so employees that were
2 arrested by ICE in the raids and whose jobs were
3 terminated, do you know why they were arrested?

4 A. Do I know why?

5 Q. Yes.

6 A. No, I don't know why.

7 Q. Well, why did Swift terminate those
8 employees?

9 A. Why did Swift terminate them?

10 Q. Yes.

11 A. Because immigration gave us a list of
12 names that they believe -- that they had taken from the
13 plants and that they believed were engaged in identity
14 fraud. And so we terminated those people.

15 Q. And if Swift did not believe those people
16 had committed identity theft, they wouldn't have
17 terminated them, correct?

18 A. That's correct.

19 Q. And it's true, isn't it, that identity
20 theft by employees at the Swift plants was typically
21 committed by illegal aliens? Isn't that true?

22 MR. YOULE: Objection to form for lack of
23 foundation.

24 A. I don't know.

25 Q. You don't know whether most of the people

1 who Swift terminated for committing identity theft were
2 illegal aliens?

3 MR. YOULE: Same objection.

4 A. I don't know.

5 Q. Do you have a belief?

6 A. I don't have any belief. No basis for my
7 belief.

8 Q. The people -- I mean, we'll look at the
9 list later, but all of the people that were terminated
10 by -- well, almost all the people that were terminated
11 by Swift as a result of the ICE raids had Spanish
12 surnames, correct? Hispanic surnames?

13 A. All?

14 Q. The vast majority.

15 A. I don't know.

16 Q. You've never looked at the list?

17 A. I have.

18 Q. Do you deny that there's connection
19 between identity theft and illegal alien status?

20 MR. YOULE: Objection to form. Could you
21 rephrase that?

22 Q. I'm just trying to understand why you are
23 arguing with the notion that these people who committed
24 identity theft were, for the most part, illegal aliens.

25 MR. YOULE: Objection to form. You're

1 assuming that they committed identity theft. What he
2 testified is that that's what the government told
3 Swift. There's a big difference there.

4 MR. PEARSON: That's fine.

5 Q. (BY MR. PEARSON) You don't just
6 terminate employees because someone makes an accusation
7 unless you think there's some merit to that accusation;
8 isn't that right?

9 A. That's correct.

10 Q. For example, we'll look at some documents
11 here later. Swift will get anonymous tips from someone
12 saying Jose Morales in your plant is an illegal alien
13 as an example. Those kind of tips come in, correct?

14 A. That's correct.

15 Q. And Swift doesn't just terminate Jose
16 Morales; they investigate it first, right?

17 A. That's correct.

18 Q. And if they believe he's committed
19 identity theft or is an illegal alien, they terminate
20 him. And if they don't believe that, they don't
21 terminate him, right?

22 A. No.

23 Q. That's not correct?

24 A. That's not correct.

25 Q. Okay. What was wrong about my statement?

1 What was inaccurate?

2 A. If an employee admits that they've been
3 engaged in identity theft, then we will terminate them.
4 If the employee doesn't admit it, but we have doubts,
5 we'll refer them to the Social Security Administration
6 to verify that information. The Social Security
7 Administration will verify that that person is indeed
8 authorized to work or that person will not return to
9 work.

10 Q. The 400 or so employees that were
11 terminated in or about October 2006 by Swift, why were
12 they terminated?

13 A. I'm sorry. I apologize. I missed that
14 question.

15 Q. Let me start over.

16 In or about October of 2006, prior to the
17 ICE raids, Swift terminated -- strike that.

18 In or about October 2006, about 400 or so
19 employees of Swift either voluntarily quit or were
20 terminated from their employment as a result of an
21 investigation that was conducted and assessment of
22 their application papers, correct?

23 A. That's correct.

24 Q. And why were those 400 or so people -- the
25 ones that were terminated by Swift, why were they

1 terminated?

2 A. Because they admitted to identity theft.

3 Q. And the 1300 or so that --

4 A. Let me rephrase that.

5 Q. Sure.

6 A. You've been using the word identity theft.

7 They admitted that they weren't who they said they
8 were.

9 Q. And the 1300 or so employees of Swift that
10 were terminated as a result of the ICE raids were also
11 suspected of having committed identity theft, correct?

12 A. Suspected by?

13 Q. Swift.

14 A. By Swift?

15 Q. Yes.

16 A. No.

17 Q. Suspected by who?

18 A. Immigration arrested the people.

19 Q. Right.

20 A. Immigration told us that they weren't
21 authorized. So if -- I suppose immigration, based upon
22 their investigation, suspected it.

23 Q. And Swift had no reason to doubt that
24 belief by ICE, correct?

25 A. Immigration told us, this is the list of

1 people that we've taken, and we believe that they're
2 not authorized to work and terminated them.

3 Q. Did it concern you, in your position as
4 director of corporate compliance, that in the October
5 to December 2006 time frame, more than 10 percent of
6 the employees at Swift's production facilities were
7 terminated or quit because of issues relating to
8 illegal immigrant status or possible identity theft?

9 MR. YOULE: Objection to form for lack of
10 foundation.

11 A. Would you rephrase the question?

12 MR. PEARSON: Can you read it back,
13 please.

14 (The last question was read back as
15 follows: "Did it concern you, in your position as
16 director of corporate compliance, that in the October
17 to December 2006 time frame, more than 10 percent of
18 the employees at Swift's production facilities were
19 terminated or quit because of issues relating to
20 illegal immigrant status or possible identity
21 theft?")

22 A. No.

23 Q. Why did it not concern you?

24 A. Because we've done everything that we've
25 been able to do to verify the employment eligibility

1 and identity of our employees.

2 Q. Well, Swift's efforts in that regard were
3 stepped up dramatically after it received the subpoenas
4 from ICE in March of 2006, correct?

5 MR. YOULE: Objection to form.

6 A. No.

7 Q. When was Connect the Dots instituted?

8 A. After we engaged Border Management
9 Strategies.

10 Q. Which was when?

11 A. Which was prior to receiving any
12 subpoenas.

13 Q. Connect the Dots was actually implemented
14 as a program sometime after March 2006, correct?

15 A. The implementation involved the
16 development, the discussions, the planning. And all of
17 that was over a time continuum. The actual full
18 rollout was in August. I believe that's correct.

19 Q. Of 2006?

20 A. Of 2006.

21 Q. And Swift provided training to its
22 employees on various issues relating to identity theft
23 in that March, April, May 2006 time frame, correct?

24 A. I don't recall the dates of the training.
25 I don't think it was March, April, May.

1 Q. Was it June of '06?

2 A. I'm thinking it was more summer, but I
3 don't -- I don't recall specifically the date.

4 Q. Summer of 2006?

5 A. Yes.

6 Q. And is that training that had not been
7 given previously?

8 A. Part of the training had been given
9 previously. Part of it was an expansion.

10 Q. And the role that Border Management
11 Strategies took on was a much broader role than Swift's
12 prior consultant, Mr. McClure, had had; isn't that
13 right?

14 A. That's right.

15 Q. When was the contractually signed with
16 Border Management Strategies?

17 A. I don't know.

18 Q. Was it in 2006?

19 A. Yes.

20 Q. Was it after March of 2006?

21 A. I don't know.

22 Q. Prior to 2006, what level of employee was
23 allowed to actually hire someone? Did you have to be a
24 manager? Or what was the position of the people doing
25 the hiring?

1 A. We have employment managers at most of our
2 locations.

3 Q. Were they doing all the hiring?

4 A. In most cases, the employment manager was
5 the person doing the hiring. And sometimes there would
6 be two or three people involved in that activity,
7 depending on the size of the plant and the applicant
8 flow.

9 Q. Anyone else?

10 A. No.

11 Q. And I'll find it later when we're talking,
12 but I thought I saw something in Swift's written
13 materials about some of the steps they were taking in
14 2006 that they were narrowing the number or position of
15 people who could do hiring. Do you remember -- does
16 that ring a bell to you?

17 A. I don't believe that narrowing is the
18 word.

19 Q. Well, what word would you use?

20 A. We were -- I don't know that we had that
21 concept exactly, so --

22 Q. There was no change in the number or types
23 or level of employees who could do hiring?

24 A. Well, we had -- no. In 2006, not until
25 after the raids we didn't have a change.